Mr Adam Mellows-Facer  
Joint Committee on the Draft Modern Slavery Bill  
Scrutiny Unit  
House of Commons  
7 Millbank  
SW1P 3JA

14 February 2014

Dear Mr Mellows-Facer

Draft Modern Slavery Bill – BMA submission to Joint Committee on the Draft Modern Slavery Bill.

The British Medical Association (BMA) welcomes the opportunity to comment on the Draft Modern Slavery Bill.

The BMA submission reflects on a number of issues in the Draft Bill. The BMA’s interest in modern slavery is primarily in the role of healthcare professionals in identifying and supporting victims of modern slavery. As we also have an interest in promoting ethical procurement in the NHS, we provide our views on proposals to eradicate modern slavery from supply chains.

We hope you find this submission useful, and look forward to hearing the outcome of the consultation. We would welcome the opportunity to further expand on the issues raised in the submission. For any queries regarding this submission, please contact Victoria Higgins, Public Affairs Assistant, at either vhiggins@bma.org.uk or tel: 020 7383 6515.

Yours sincerely

Professor Vivienne Nathanson  
Director of Professional Activities, BMA
EVIDENCE FROM THE BRITISH MEDICAL ASSOCIATION FOR THE JOINT BILL COMMITTEE ON THE DRAFT MODERN SLAVERY BILL

About the BMA

The BMA is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine throughout the UK. With a membership of over 153,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

Executive summary

- The BMA supports the development of the Modern Slavery Bill and welcomes the opportunity to feed into the pre-legislative scrutiny process. We believe that it is right to introduce legislation that attempts to tackle these crimes and their effects.

- We have serious concerns about the confusion and lack of consistency throughout the Draft Bill and supporting documents over the use of the terms trafficking, slavery, domestic servitude and exploitation. This gives rise to concern that this new legislation may only deal with the major headline-hitting cases, and the majority of hidden and unrecognised cases will not be captured or appropriately addressed.

- We also believe that the legislation fails to address effectively the issue of child victims of trafficking and exploitation. The Bill should make it clear that the provisions apply to both adults and children and needs to go further to ensure adequate support and protection for child survivors.

- We are concerned that the Bill as currently drafted is too focussed on bringing perpetrators to justice rather than preventing these crimes, recognising the issues at an early stage, promoting inter-agency collaboration and ensuring a high level of awareness and training amongst key staff.

- The BMA supports the recommendation from the Report of the Modern Slavery Bill Evidence Review detailing legislation to encourage transparency in supply chains of UK products and imports. It is disappointing that this recommendation has not been incorporated into the Draft Bill and the Government has said it will continue to promote transparency on a voluntary basis. We believe that this does not go far enough and we continue to call for further legislation to enhance the chances of eliminating the exploitation of workers.

Definition of Modern Slavery

Would the Draft Bill be effective in reducing the incidence of and preventing modern slavery?

1. The BMA believes the title of this legislation and the lack of consistency throughout the supporting documents about the use of the terms trafficking, slavery, domestic servitude and exploitation will create confusion, and will lead to cases being missed or not properly investigated. Unless a more consistent and clearly defined approach is standardised at the outset, there is a risk that cases where the evidence is weaker and needs more time to be considered and collated may be lost in the system.
2. We would like to see the title of this Draft Bill to be changed to include ‘trafficking’ and ‘exploitation’ rather than just ‘modern slavery’.

3. We believe the long title should be amended to the following: ‘To make provision about slavery, human trafficking and exploitation; to make provision for an Anti-slavery Commissioner; and for connected purposes related to adults and children’.

4. We are concerned that the Draft Bill fails to describe with sufficient clarity the definitions of some of the terms used within it, including slavery and servitude. It will be difficult for professionals to know whether or not the behaviour is slavery or servitude and for appropriate guidance to be developed which is consistent across England and Wales. This is incredibly important in child protection cases.

Children

Are there other provisions which should be included in the Draft Bill?

5. A number of BMA members have raised concerns that the legislation does not effectively address the issue of child victims of trafficking and exploitation. The Bill should make it explicitly clear that the provisions apply to both adults and children, as we believe this would be a continual reminder to professionals across public services that people of all ages can suffer from these types of abuse.

What non-legislative action needs to be taken to ensure effective implementation of the Draft Bill?

6. The documents supporting the Draft Bill appropriately highlight the issue of children who might have been trafficked into the UK. They fail, however, to highlight in as much detail as is necessary the possibility of children being trafficked within the UK where their home has always been here. Although the terms of the Draft Bill itself recognise this as an issue, we believe it will be necessary to ensure, via the mandatory provision of appropriate guidance, that the possibility of children being trafficked or exploited within the UK is more widely recognised and investigated.

Does the Draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?

7. Our members have noted that the legislation ought to recognise more clearly that children who have been subject to, or who are at risk of, slavery, servitude, forced or compulsory labour, trafficking, exploitation or sexual exploitation are fully recognised as being at risk of significant harm or having suffered from significant harm. This would ensure that the statutory duties set out in Section 47 of the Children Act 1989 can be used at an earlier stage and in a more consistent and detailed way from the outset.

8. Although the draft legislation is clearly intended to be a criminal bill, it is important that there is consistency with civil protection rights for children, including under the Children Act 1989, to ensure that the cases where evidence is weaker, but children are still at risk, are properly dealt with.

9. There needs to be further cross-referencing to the Children Act 1989 and, in particular, clarity about the definition of ‘exploitation’, ‘slavery’ and ‘servitude’ (via mandatory guidance from the Secretary of State) and how the provisions currently available within the Children Act 1989 (Section 14A) related to special guardianship orders might be used to protect children at risk of, or who are likely to have suffered from, ‘slavery’,
‘exploitation’ or ‘trafficking’.

10. There should be specific reference to a system of guardianship for children who may be (or who are) victims of the crimes listed in this Draft Bill, including mandatory and standardised multi-agency training for social workers, police and appropriate healthcare professionals.

11. We believe the recommendations in paragraph 6.5 of the Evidence Review report relating to improved protection and support for children ought to be adopted into the Draft Bill. Where this is not legislatively possible, they must be a strong commitment to include this in non-legislative action, so that effective protection for children at risk of significant harm is ensured.

12. Our members have also noted that the CEOP (Child Exploitation and Online Protection) command of the National Crime Agency ought to be specifically referred to at some point, either in guidance or in the Draft Bill itself, in order that their wealth of experience at a UK and international level is properly utilised and recognised.

**Duty to Notify the National Crime Agency**

*Are there other provisions which should be included in the Draft Bill?*

13. It is currently unclear which bodies will have the legal duty to report issues to the National Crime Agency, the sanctions that will occur if they do not and exactly who is responsible for that duty within the relevant organisations. The BMA would welcome further clarity on this issue.

14. We believe Clause 35(3) should include more detail on the rights of individuals requesting anonymity, and state that only necessary, relevant and proportionate information should be disclosed. This section should make reference to the ‘common law duty of confidentiality’ as well as the Data Protection Act 1998. In breaching medical confidentiality, doctors follow rules of proportionality and necessity which are well established legal and ethical principles.

15. Under Part 4, Clause 35 (4), the word ‘may’ should be changed to ‘shall’, as we believe it is crucial that there is standardisation across England and Wales relating to the types of guidance issued to public authorities. The BMA would welcome consultation on the drafting of such guidance.

**Review of the National Referral Mechanism**

*What non-legislative action needs to be taken to ensure effective implementation of the Draft Bill?*

16. The National Referral Mechanism (NRM) was set up to support victims of trafficking in the UK; however, the focus is on ‘trafficking’ rather than ‘slavery’. The BMA is concerned that there is potential for confusion without a clear definition at the start of the process.

17. We would also welcome further clarity on whether the list of first responders will be extended to include healthcare professionals. Page 8 of the White Paper does not include healthcare professionals amongst first responders but on page 11 NHS professionals are listed as requiring training in this area. It would be helpful to have
further information about the exact duties that could be placed on doctors in relation to the NRM, including any additional workload or reporting responsibilities.

18. We note that page 8 of the White Paper states that guidance will make it clear that victims referred to the NRM will be able to remain anonymous if they wish, and will not be obliged to accept support. The BMA has some concerns about whether this is appropriate for children, including children who lack competence. We would also welcome further clarity on what will be reported if the victim does choose to remain anonymous.

19. The NRM was created in response to an obligation to identify victims of trafficking under the Council of Europe Convention on Action against Trafficking in Human Beings, which came into force on 1 February 2008. We believe that the Draft Bill needs to be put into context with what has happened in Europe, and the Government ought to make clear, in documentation supporting this Draft Bill how the elements of the European Directive have been, or will be, incorporated into UK law.

**Anti-Slavery Commissioner**

*How could the proposals for the Anti-Slavery Commissioner be improved?*

20. The BMA would welcome further clarification on whether the NHS will be required to report to the Anti-Slavery Commissioner and of any additional duties that may be placed on healthcare workers.

21. We believe Clause 33(4)(a) should include ‘and common law duty of confidentiality’ as well as Data Protection Act 1998.

**Training for Healthcare Workers**

*How could the proposals for the Anti-Slavery Commissioner be improved?*

22. At present, under Part 3, Clause 31, 2(d) of the Draft Bill the provision of information, education or training by the Anti-Slavery Commissioner is optional. The BMA believes that there ought to be information provided to healthcare professionals by the Commissioner. There could be benefits in the provision of education or training by the Commissioner in order that duplication of effort at a regional or local level is minimised and so that standardisation of education and training across England and Wales is more likely to be facilitated.

*What non-legislative action needs to be taken to ensure effective implementation of the Draft Bill?*

23. The White Paper recommends training for public sector workers as part of the non-legislative package. We would welcome the provision of guidance from the Secretary of State about what sort of signs indicate an individual may be a victim of trafficking. Standardised educational materials ought to be used by the NHS so that it is clear that healthcare professionals have had the same training and the same information related to the prevention or early recognition of potential cases.

**Support for victims**

*Does the Draft Bill provide for adequate safeguarding of survivors of slavery and trafficking?*
24. The Evidence Review report recommends that the Bill should set out on a statutory basis what support should be offered to victims, including what healthcare and specialised counselling should be provided. The BMA is concerned that this recommendation has not been included in the Draft Bill and that there is a lack of detail about the provisions that will be put into place to support victims.

25. The BMA believes that protection for victims ought to, and needs to, include a comprehensive package of health and social care provision. The Draft Bill needs to provide the statutory basis for the provision of support to all potential victims including legal assistance, healthcare and specialist counselling and comprehensive social provisions relating to accommodation, benefits and other such measures as may be necessary.

Supply chains and Government procurement

Are there other provisions which should be included in the Draft Bill?


27. In the UK the NHS spends in excess of £40 billion per annum on the procurement of goods and services. The supply chains that provide these commodities are global, and employ hundreds of thousands of people worldwide. There is a growing body of evidence that, in some cases, the basic employment rights of people in these supply chains are being exploited.

28. Labour rights issues have been documented in the manufacture of several medical products, including poor remuneration which falls below the living wage, unsafe working conditions, and exploitation of child labour.

29. The NHS has a responsibility both as an employer and as the national health system in the United Kingdom to ensure that its practices do not negatively impact on the health and wellbeing of workers making products outside the UK that ultimately supply our hospitals and practices.

30. The NHS must ensure that the goods purchased are manufactured in conditions that adhere to international labour standards.

31. We believe the Draft Bill should require the following:

- All NHS authorities, trusts and clinical commissioning groups who procure to undertake a risk assessment of their procurement activities and instigate appropriate action to protect working conditions, human rights and environmental protection in the supply chain. Labour rights should not be considered in balance with cost, but adherence to minimum standards should be an absolute requirement.

- Suppliers should be required to demonstrate their commitment to labour standards by showing that they have a system in place for recognising labour issues and for dealing with these appropriately. This should be considered a qualifying statement: those who do not demonstrate a commitment to improving working conditions where required are disqualified as a supplier.
• Mandatory reporting by NHS authorities, trusts and clinical commissioning groups will also be necessary, to ensure that action taken is monitored and progress is measured.

32. The BMA leads on the campaign for ethical procurement in the NHS, to encourage NHS organisations to incorporate ethical standards into their procurement processes and to ensure consideration is given to the social impact of purchasing decisions.

33. The Draft Bill has the potential to impact on a range of procurement contracts that are worth up to £40 billion of annual NHS expenditure. If major manufacturers and suppliers of healthcare products strive to ensure fair and ethical practices in the manufacture of their products, then the potential impact on global supply chains is vast.

References

3 Section 2h, page 11, of the Draft Modern Slavery Bill states ‘The Department of Health will roll out training to raise awareness of modern slavery among NHS professionals’